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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Twelfth session
Kingston, Jamaica
7-11 February 1994

STATEMENT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During this session, the Preparatory Commission dealt with the following matters:

I. Organization of work.

II. The implementation of resolution II:

(a) Consideration of the application from the Republic of Korea for registration as a pioneer investor (LOS/PCN/134);

(b) Periodic reports of the registered pioneer investors;

(c) Consideration of the report of the Group of Technical Experts on the state of deep seabed mining and an assessment of the time when commercial production may be expected to begin (LOS/PCN/BUR/R.32);

(d) The question of relinquishment of pioneer areas (resolution II, para. 1 (e));

(e) Consideration of the letters from the coordinator of the group of registered pioneer investors (LOS/PCN/128 and LOS/PCN/131) regarding necessary adjustments concerning the system of obligations of the registered pioneer investors of France, Japan and the Russian Federation consistently with the principle of equality of treatment;

(f) The contents of the certificate of compliance;

(g) The report of the Training Panel.

III. Matters arising from the imminent entry into force of the Convention:

(a) Preparation of the provisional agenda for the first session of the Assembly and of the Council of the Authority and, as appropriate, of recommendations relating to items thereon (resolution I, para. 5 (a));

(b) Preparation of recommendations concerning the budget for the first financial period of the Authority (resolution I, para. 5 (c));

(c) Arrangements for convening the first session of the Assembly of the Authority referred to in article 308, paragraph 3, of the Convention (resolution I, para. 5 (a));

(d) Report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea to the meeting of States Parties to the United Nations Convention on the Law of the Sea (resolution I, para. 10);

(e) Final report on all matters within the mandate of the Preparatory Commission, except as referred to (d) above, to the Assembly of the International Seabed Authority at its first session (resolution I, para. 11).

I. ORGANIZATION OF WORK

2. On 7 February 1994, on the recommendation of the General Committee, the plenary adopted a programme of work for this session of the Commission which provided for more meetings than hitherto for the General Committee acting as the executive organ for the implementation of resolution II. Provision was also made for formal sessions of the Plenary to deal with matters arising from the imminent entry into force of the Convention. Arrangements were made for meetings of the Training Panel to take place during the first three days of the session.

II. THE IMPLEMENTATION OF RESOLUTION II

A. Consideration of the application from the Republic of Korea for registration as a pioneer investor (LOS/PCN/134)

3. On 7 February 1994 the General Committee considered the application from the Republic of Korea for registration as a pioneer investor (LOS/PCN/134). Having examined this application, the General Committee decided to convene a meeting of the Group of Technical Experts to examine and report to the General Committee on the application in accordance with the provisions of LOS/PCN/L.41/Rev.1 at the next summer meeting of the Preparatory Commission (LOS/PCN/135).

B. Periodic reports of the registered pioneer investors

4. In accordance with paragraph 5 of the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex, LOS/PCN/L.102, annex, and LOS/PCN/L.108, annex) the certifying States, France on behalf of IFREMER/AFERNOD, India, Japan on behalf of Deep Ocean Resources Development Co., Ltd. (DORD), China on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA) and Poland on behalf of the Interoceanmetal Joint Organization (IOM) submitted periodic reports to the Preparatory Commission. Those reports are contained respectively in documents LOS/PCN/BUR/R.31, LOS/PCN/BUR/R.34, LOS/PCN/BUR/R.35, LOS/PCN/BUR/R.33 and LOS/PCN/BUR/R.30.

5. During the discussion of this item in the General Committee certain delegations stated that it was difficult to understand the scientific terms used in the reports. It was also suggested that a more systematic format should be used for these periodic reports. In addition, the view was expressed that these reports should indicate the impact of the activities of the registered pioneer investors on the marine environment.

6. The General Committee took note of the periodic reports.

C. Consideration of the report of the Group of Technical Experts on the state of deep seabed mining and an assessment of the time when commercial production may be expected to begin (LOS/PCN/BUR/R.32)

7. The General Committee, on 8 February 1994, considered the report of the Group of Technical Experts to the General Committee of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (LOS/PCN/BUR/R.32). The Group of Experts was convened in accordance with the mandate contained in paragraph 12 of document LOS/PCN/L.87, annex, to review the state of deep seabed mining and make an assessment of the time when commercial production might be expected to begin.

8. The report concluded that:

"As regards the time when commercial production may be expected to commence, the Group concludes as follows:

"(a) Although the exact timing remains uncertain as a result of a variety of imponderable factors, commercial production from the deep seabed is likely at some time in the future because deep seabed resources constitute potential commercial prospects primarily on account of: (a) the vastness of resources; (b) the multi-metal characteristics of the ore; and (c) the absence of insurmountable technological obstacles in the mining or processing of these resources;

"(b) It is, however, certain that commercial deep seabed mining will not take place during the remainder of the current decade (up to the year 2000);

"(c) It is also unlikely that commercial deep seabed mining will take place during the following decade (2001-2010);

"(d) An assessment of the time when commercial production from deep seabed mining may be expected to commence can be made with further precision when in the future large-scale feasibility studies and deep-sea tests for a sustained period are undertaken." (LOS/PCN/BUR/R.32, para. 57).

9. It was the general view that the report provided sound guidelines for future action with respect to deep seabed mining. Attention was drawn to the importance the Group of Experts attached to the protection of the environment with regard to deep seabed mining activities. It was also noted that, given the unpredictability of the factors which could affect the timing of deep seabed developments, it would be prudent to adopt time frames enabling the situation to be reviewed from time to time.

10. The General Committee took note of the report.

D. The question of relinquishment of pioneer areas (resolution II, para. 1 (e))

11. On 7 February the General Committee took up the question of relinquishment of pioneer areas.

12. Under resolution II the pioneer investor is under an obligation to relinquish portions of the pioneer area to revert to the Area in accordance with the schedule contained in paragraph 1 (e) of that resolution. India, which became a registered pioneer investor on 17 August 1987, was due to relinquish 20 per cent of its allocated area by 17 August 1990 and a further 10 per cent of the area allocated by 17 August 1992. COMRA (China), which became a registered pioneer investor on 5 March 1991, is due to relinquish 20 per cent of its allocated area by 5 March 1994. IOM, registered on 21 August 1991, is due to relinquish 20 per cent of its allocated area by 21 August 1994.

13. India pointed out that the understanding on the fulfilment of its obligations had been reached in August 1990. From that date India has been complying with the obligations. A plan of relinquishment of 20 per cent of the area has already been finalized and the matter is under consideration by the Government. The relinquishment of 20 per cent of the area will be notified as soon as a decision in the matter is taken by the Government.

14. China reported that in 1993 its research vessel R/V Xiangyanghong 16, which was assigned to undertake exploration of approximately 40,000 square kilometres within the pioneer area, had been hit by a foreign ship and had sunk. As a result of this event China has had to postpone its arrangements to comply with the prescribed schedule for the relinquishment of areas. In 1994 China will intensify exploration activities at sea. It is China's intention to relinquish 30 per cent of the allocated area at the end of the fifth year in accordance with paragraph 1 (e) of resolution II.

15. The General Committee agreed that final decisions with respect to relinquishment of areas will be taken at the next meeting of the Preparatory Commission.

E. Consideration of the letters from the coordinator of the group of registered pioneer investors (LOS/PCN/128 and LOS/PCN/131) regarding necessary adjustments concerning the system of obligations of the registered pioneer investors of France, Japan and the Russian Federation consistently with the principle of equality of treatment

16. The General Committee considered the letters dated 25 March 1993 and 1 October 1993 (LOS/PCN/128 and LOS/PCN/131) respectively from the coordinator of the group of registered pioneer investors on behalf of France, Japan and the Russian Federation addressed to the Chairman of the Preparatory Commission requesting the General Committee to carry out "necessary adjustments concerning the system of obligations of the registered pioneer investors of France, Japan and the Russian Federation consistently with the principle of equality of treatment" (LOS/PCN/131). The General Committee has begun consideration of this request. It is of the view that the issue needs further consideration.

17. The Chairman intends to hold a series of consultations on this issue. These consultations will be undertaken, taking into consideration the principle of equality of treatment, the provisions of paragraph 40 (a) of document LOS/PCN/L.87 and developments in the Secretary-General's informal consultations.

18. The General Committee considered the issues relating to the waiver of the annual fixed fee payable under Annex III, article 13, paragraph 3, in the light of the conclusions of the Group of Technical Experts contained in paragraph 57 of its report (LOS/PCN/BUR/R.32) and the decision of the Preparatory Commission embodied in LOS/PCN/L.87, annex, paragraph 12. The representative of the Russian Federation introduced a proposal regarding a decision by the General Committee on the issue of the annual fixed fee and the extension from six months to 10 years of the period within which a plan of work for exploration should be submitted (LOS/PCN/BUR/R.38). He noted that failure by the Preparatory Commission to adopt that decision would mean a violation of previous Preparatory Commission decisions contained in documents LOS/PCN/L.87 and LOS/PCN/L.113/Rev.1. Further consideration will be given to this issue at the summer meeting of the Preparatory Commission to determine the relevant period for which the waiver will be made.

F. The contents of the certificate of compliance

19. The General Committee requested the Secretariat to prepare a draft certificate of compliance relating to the obligations of the registered pioneer investors under resolution II and the related understandings which will be submitted to the Preparatory Commission at its next meeting.

G. The report of the Training Panel

20. The Training Panel held its 5th meeting from 7 to 9 February 1994. Its report is contained in document LOS/PCN/BUR/R.37.

21. The Panel selected nine candidates for the training programmes offered by China and the Interoceanmetal Joint Organization and for the traineeship in chemical engineering offered under the training programme of India. The names of the candidates selected by the Panel and recommended for designation by the Preparatory Commission in respect of the above training programmes are contained in document LOS/PCN/BUR/R.36. The Panel took note of the progress reports submitted by France, Japan, India and the Russian Federation on the implementation of their training programmes; approved the training programme submitted by Germany; received information on the training programme of the International Ocean Institute; and approved the format of the training certificates to be issued by the Preparatory Commission to the trainees. The Panel also discussed the implications of the entry into force of the United Nations Convention on the Law of the Sea for the Preparatory Commission Training Programme. The Training Panel will be submitting its final report to the General Committee at the forthcoming summer meeting in New York.

22. On 11 February 1994, the General Committee considered the report of the 5th meeting of the Training Panel and took note of it. The General Committee endorsed the recommendation of the Panel that the selected candidates be designated by the Preparatory Commission for the traineeships offered under the training programme of China; for the three traineeships in geophysics and one traineeship in metallurgical engineering offered under the training programme of the Interoceanmetal Joint Organization; and for the traineeship in chemical engineering offered under the training programme of India.

III. MATTERS ARISING FROM THE IMMINENT ENTRY INTO FORCE OF THE CONVENTION

A. Preparation of the provisional agenda for the first session of the Assembly and of the Council of the Authority and, as appropriate, of recommendations relating to items thereon (resolution I, para. 5 (a))

23. At its 76th meeting, held on 8 February 1994, the Plenary considered this item of its agenda. The Chairman suggested a series of items to be included in the provisional agenda for the first session of the Assembly of the International Seabed Authority.

24. During the discussion of these items it was pointed out that, before electing the members of the Council, the Assembly has to establish a list of countries fulfilling the criteria for membership in the various categories. Therefore, it was suggested that an item entitled "Matters related to the election of the members of the Council" should precede the item "Election of the members of the Council".

25. Having considered this item of its agenda, the Plenary decided to request the Secretariat to prepare for the next meeting of the Preparatory Commission, on the basis of the proposal made by the Chairman and taking into account the views expressed during the debate, the draft provisional agenda for the first session of the Assembly and of the Council of the International Seabed Authority.

B. Preparation of recommendations concerning the budget for the first financial period of the Authority (resolution I, para. 5 (c))

26. With regard to the issue of the budget for the first financial period of the Authority, the Chairman drew the attention of the Plenary to the background paper on this subject prepared by the Secretariat and circulated in document LOS/PCN/WP.51. This paper is entitled "Administrative Arrangements, Structure and Financial Implications of the International Seabed Authority". The Chairman noted that although the paper could be used by the Secretariat as a basis in preparing concrete recommendations for the next meeting of the Preparatory Commission, the Secretariat should be given additional guidance and more precise instructions regarding budgetary requirements of the Authority, its secretariat structure and the number of meetings of the organs of the Authority.

27. In the preparation of the draft budget the Secretariat will include recommendations concerning the secretariat of the Authority, as required under resolution I, paragraph 5 (e).

28. It was also noted that at the Secretary-General's informal consultations on outstanding issues relating to the deep seabed mining provisions of the United Nations Convention on the Law of the Sea, its participants continued to consider options directed towards ensuring the cost-effectiveness of the Authority without sacrificing its efficiency. Therefore, in preparing concrete recommendations for the next meeting of the Preparatory Commission, the Secretariat should take into account what might emerge from those consultations regarding the issue of costs to States parties to the Convention and institutional arrangements.

29. It was reiterated during the debate that the Authority should be both cost-effective and efficient. It was pointed out in this regard that the questions of structure and budget should be analysed against the functions to be performed by the Authority. The attention of the Plenary was drawn to the fact that the Authority would not be cost-effective and efficient unless it was capable of discharging its functions effectively.

30. With reference to the issue of structure, a suggestion was made that the secretariat of the Authority should probably consist of several divisions which would be responsible, inter alia, for such activities as research and planning, monitoring, preparation of rules and regulations, finances and administration, legal matters and, as far as the Enterprise is concerned, implementation of joint venture arrangements.

31. In connection with the Enterprise, reference was also made to document LOS/PCN/SCN.2/1990/CRP.5 entitled "Suggestions of the Chairman to facilitate discussion of transitional arrangements for the Enterprise".

32. At the suggestion of the Chairman, the Plenary agreed that the Secretariat would prepare for the next meeting of the Preparatory Commission the draft budget for the first financial period of the Authority, which would be based on the background paper LOS/PCN/WP.51 and would take into account statements made during the consideration of this item.

C. Arrangements for convening the first session of the Assembly of the Authority referred to in article 308, paragraph 3, of the Convention (resolution I, para. 5 (a))

33. With reference to this item, the Chairman advised the Plenary that the Preparatory Commission should address such issues as the opening date of the first session, its duration and the servicing of the session.

34. In accordance with article 308, paragraph 3, of the United Nations Convention on the Law of the Sea, the Assembly shall meet on the date of the entry into force of the Convention - 16 November 1994.

35. In view of the fact that 16 November 1994 coincides with a busy period in the work of the General Assembly of the United Nations, some delegations believed that for practical reasons it would not be possible to hold a long session of the Assembly of the Authority during the regular session of the United Nations General Assembly. It was suggested that perhaps a one-day meeting of States Parties to the Convention should be convened on 16 November 1994 in New York in order to take a decision to postpone the date of the first session of the Assembly until some time during the early part of 1995. This inaugural session of the Assembly will be held at the seat of the Authority in Jamaica.

36. Some delegations were of the view that there was no legal basis for the postponement of the first session of the Assembly, since article 308, paragraph 3, stipulated that the Assembly of the Authority shall meet on the date of entry into force of the Convention. In this regard they also referred to article 159, paragraph 3, which provided that the sessions of the Assembly shall take place at the seat of the Authority, namely, in Jamaica. Therefore, they proposed that a short opening meeting of the Assembly should be held in Jamaica.

37. The Russian Federation noted that, according to the provisions of the Convention (art. 171, subpara. (a), inter alia), the budget of the Authority consisted of contributions from States Parties; that excluded the possibility of financing the Authority from the United Nations budget and using the United Nations Secretariat. The decision on the financing of the Preparatory Commission in accordance with resolution I could not automatically be extended to the activity of the Authority, including the holding of the first session of its Assembly.

38. The view was also expressed that the whole question of the financing of the Authority was subject to decisions that would be taken in the light of the ongoing informal consultations held under the auspices of the Secretary-General of the United Nations.

39. The Plenary decided to continue consideration of the item dealing with the arrangements for convening the first session of the Assembly at its next meeting.

D. Report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea to the meeting of the States Parties to the United Nations Convention on the Law of the Sea (resolution I, para. 10)

40. The Plenary considered this item at its 77th meeting, held on 10 February 1994.

41. At the suggestion of the Chairman the Plenary requested the Secretariat to prepare for the next meeting of the Preparatory Commission a draft report regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, which the Preparatory Commission has to submit under the provisions of paragraph 10 of resolution I to the meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the Convention on the Law of the Sea.

42. In response to an inquiry, the Chairman informed the members of the Preparatory Commission that at this session he had started consultations, which he would continue during the inter-sessional period, regarding costs of the Tribunal and the issue of ensuring the representation in the Tribunal of the principal legal systems of the world and equitable geographical distribution. He added that the results of these consultations would be submitted to the members of the Preparatory Commission at its next meeting so that the Commission could consider recommendations which it might wish to make in this regard to the meeting of the States Parties.

E. Final report on all matters within the mandate of the Preparatory Commission, except as referred to in section D above, to the Assembly of the International Seabed Authority at its first session (resolution I, para. 11)

43. Under resolution I, paragraph 11, the Preparatory Commission has to prepare a final report on all matters within its mandate, except as provided in paragraph 10 of that resolution, to the Assembly at its first session. The Preparatory Commission has already adopted a provisional final report. The Secretariat is requested to prepare a draft final report which will consist of the provisional final report supplemented by any further decisions which may be taken by the Preparatory Commission.

IV. SUMMER MEETING OF THE PREPARATORY COMMISSION

44. The Preparatory Commission will hold its summer meeting in New York from 1 to 12 August 1994.